

GENERAL SERVICES AGREEMENT

This general services agreement, effective _____ (hereinafter referred to as "Agreement") by and between the City of Central Point (hereinafter referred to as "City"), and "Consultant" located at _____ Oregon, (hereinafter referred to as ""Consultant""), is established for those services rendered by "Consultant" upon request by City. City and "Consultant" agree to the following:

GENERAL TERMS AND CONDITIONS

AUTHORIZED REPRESENTATIVES: For the purposes of this agreement, the City's authorized representatives shall be either the City Administrator, the Public Works Director, or their duly authorized representatives. The authorized representative for "Consultant" shall either be _____, or his duly authorized representative.

TASK RELEASE REQUESTS: City shall notify "Consultant" when "Consultant"'s services are being requested. The City's authorized representative will call and provide a brief description of the requested services of "Consultant". "Consultant" will then prepare and submit a task release request. The task release request will include:

- A brief written description of the tasks to be performed;
- An estimate of labor hours and costs, direct costs, and a "not-to-exceed" budget for the described work to be completed; and
- A schedule for when the work is to be completed.

The City's authorized representative will then review the task release request and either approve the task release request, or will make a call to "Consultant" to make modifications. If appropriate, "Consultant" will modify and resubmit the task release request. Work will not be started until the appropriate City's authorized representative approves and signs the task release request, unless otherwise approved by City's authorized representative. The task release request may be submitted to the City's authorized representative by facsimile machine.

TASKS DESCRIPTIONS AND BUDGETS: "Consultant" shall not modify the budgets or the task descriptions in the signed task release requests without obtaining written approval from the City's authorized representative. The budgets are considered not-to-exceed amounts, and shall not be exceeded without obtaining written approval from the City's authorized representative.

EXTRA WORK AND CHANGE ORDERS: The City may request "Consultant" to perform extra work, or may issue a change order regarding work or services listed in the task release request. All extra work requests and change orders will be made in writing by City's authorized representative. Any extra work request issued will have a binding "not to exceed" cost amount, that has been negotiated with "Consultant" prior to issuance of the extra work request. If "Consultant" feels that any change order issued will effect any of the pricing for work or services listed in the task release, then "Consultant" is to supply to City's authorized representative in writing, within 48-hours of issuance of the change order to "Consultant", "Consultant"'s requested adjustments to the pricing of items in the task release request, and justification for such adjustment. "Consultant"'s requested adjustments to the pricing of tasks in the task release request, shall be as negotiated and approved by City's authorized representative prior to "Consultant" performing the work or services associated with the change order. All definitions, terms, and conditions of this Agreement shall apply to change orders and extra work requests issued by City and performed by "Consultant".

“Consultant”’S WARRANTIES: “Consultant” warrants that:

- (a) It understands the currently known hazards which are presented to persons, property, and the environment in working on, above, in, and in the vicinity of the project site.
- (b) Its personnel have developed requisite expertise to perform the particular work and services of this Agreement, in a safe, workmanlike, professional, and lawful manner;
- (c) All work performed by “Consultant” shall meet the requirements of the various regulatory agencies involved. It shall comply with all applicable statutes, ordinances, rules, laws, orders, and regulations. “Consultant” will provide and maintain a safe work environment for services and work performed under this Agreement, on any premises owned or controlled by City;
- (d) That all vehicles used to perform the work or services stated in this Agreement have all permits, licenses, certificates, or other approvals required under applicable federal, state, and local laws, regulations, statutes, ordinances, rules, policies and orders; and
- (e) It shall comply with all applicable statutes, ordinances, rules, laws, orders, and regulations.

CITY’S WARRANTIES: City warrants that:

- (a) It will make available to “Consultant” all information it has in regards to the project site and the work required to be performed.
- (b) Its personnel have developed requisite expertise and training to perform City’s portion of the work and services of this Agreement, in a safe, workmanlike, professional, and lawful manner; and
- (c) It shall comply with all applicable statutes, ordinances, rules, laws, orders, and regulations.

EXCUSE OF PERFORMANCE: The performance of this Agreement may be suspended by either party in the event such performance is prevented, impaired, or delayed by any cause beyond the reasonable control of such party. The party whose performance is suspended, shall use all reasonable efforts to resume performance promptly.

CITY INDEMNIFICATION: City agrees to indemnify and save harmless “Consultant” and its officers, employees, agents, and their subcontractors, from and against any and all liabilities, losses penalties, fines, claims, costs, and expenses incidental thereto (including costs of defense, settlement, and reasonable attorneys’ fees), which any or all of them may hereafter suffer, incur, be responsible for, or pay out as a result of bodily injury (including death), property damage, contamination of or adverse effects on the environment, or any violation or alleged violation of statutes, ordinances, laws, orders, rules, or regulations, to the extent caused by City’s breach of this Agreement or by any sole negligent act, negligent omission, or willful misconduct of City or its employees, agents, or City’s other contractors or consultants in the performance of this Agreement.

“Consultant” INDEMNIFICATION: “Consultant” agrees to indemnify and save harmless City and their officers, employees, agents, and City’s other contractors or consultants from and against any and all liabilities, losses, penalties, fines, claims, costs, and expenses incidental thereto (including costs of defense, settlement, and reasonable attorneys’ fees), which any or all of them may hereafter suffer, incur, be responsible for, or pay out as a result of bodily injury (including death), property damage, contamination of or adverse effects on the environment, or any violation or alleged violation of statutes, ordinances, laws, orders, rules, or regulations, (a) to the extent caused by “Consultant”’s breach of this Agreement or by any negligent act, negligent error or omission, or willful misconduct of “Consultant” or its employees, agents, or “Consultant”’s subcontractors in the performance of this Agreement, and/or (b) arising out of the performance of work and services with respect to this Agreement.

INSURANCE: "Consultant" shall procure and maintain, and list City as the Certificate Holder and as an additional insured, throughout the term of this Agreement covering "Consultant"'s activities performed under, and contractual obligations underwritten in, this Agreement, the following minimum amounts of insurance coverage:

<u>Coverage</u>	<u>Limits</u>
Workers Compensation	Statutory
Employers Liability	\$100,000
General Liability	\$500,000 per Occurrence, \$1,000,000 Aggregate
Auto and Truck Liability	\$500,000 per Occurrence
Combined bodily injury and property damage liability	\$500,000 per Occurrence, \$1,000,000 Aggregate

"Consultant" shall also procure and maintain professional liability insurance coverage (including, but not limited to, "errors" and "omissions" coverage) in the amounts of \$500,000 for each loss, and \$1,000,000 total all losses throughout the term of this Agreement covering "Consultant"'s activities performed under, and contractual obligations underwritten in, this Agreement, again listing City as the Certificate Holder and as an additional insured. A certificate of insurance shall be provided to the City, on an approved form, and be renewed as appropriate, prior to the commencement of any work under this agreement, and for the duration of this agreement.

TERM: This Agreement shall commence on the date set forth above and shall continue in effect indefinitely unless sooner terminated by either party, with or without cause, upon thirty (30) days prior written notice to the other party. Termination as herein provided shall be in addition to, and not in lieu of, a party's right to terminate for breach. Termination shall operate to discharge all obligations that are executory by either party on or after the effective date of termination, but any right of a party based on performance or breach of this Agreement prior to the effective date of termination shall survive.

City may terminate this Agreement in whole or in part upon written notice in the event "Consultant" breaches any duty, obligation, or service pursuant to this Agreement. If City terminates this Agreement pursuant to this paragraph of this section, "Consultant" shall be liable for damages, including any additional costs of procurement of similar work and services from another source.

INDEPENDENT CONTRACTOR: "Consultant" is and shall perform this Agreement as an Independent Contractor, and as such, shall have and maintain complete control over all of its employees, agents, operations, and subcontractors. Neither "Consultant" nor anyone employed by it or its delegates shall be or be deemed to be, or act or purport to act as, the agent, representative, employee or servant of City, without the separate expressed written authorization from City.

INSPECTION: City shall have the right to inspect and obtain copies of all written licenses, permits, or approvals issued by any governmental entity or agency to "Consultant" or its delegates which are applicable to the performance of this Agreement; to inspect and obtain copies of all "Consultant"'s (or its delegate's) employee training and certification documentation that is required by federal, state, or local statutes, ordinances, laws, orders, rules, or regulations for performing work or services under this Agreement

NO WAIVER: Any failure of a party to enforce any provision of this Agreement will not constitute a waiver of such provision or prejudice the right of that party to enforce such provision at any subsequent time.

RECORDS: During the term of this Agreement and any such longer period as is required by law or as specified herein, "Consultant" shall maintain records pertaining to the work and services it provides under this Agreement. Original (if applicable) records (i.e. reports, designs, plans, drawings, displays, specifications, calculations, models, model results, photographs, videos, maps, etc; in either, or both, a printed or electronic form) or copies of such records shall be submitted to City within thirty (30) days of the work occurrence, unless otherwise specified herein or as later specified by City. "Consultant"'s records regarding the work shall be available for

inspection by or forwarding to City or its delegate at such reasonable time and place as City may request in writing.

REIMBURSEMENT: "Consultant" shall be reimbursed on a time and materials basis, in accordance with "Consultant"'s current Schedule of Charges, a copy of which is attached and which, hereafter, is incorporated into this agreement. This Schedule of Charges may be periodically updated by "Consultant", but the updated Schedule of Charges will not be incorporated into this Agreement, unless approved in writing by City.

TAXES, TARIFFS, FEES, AND SURCHARGES: The prices set forth in "Consultant"'s Schedule of Charges shall include any tax, tariff, fee, or surcharge assessed on any of the work described in any given task release request.

PROFESSIONAL RESPONSIBILITY: "Consultant" or their subcontractors shall perform services consistent with skill and care ordinarily exercised by other professional consultants/contractors under similar circumstances at the time services are performed, subject to any limitations established jointly by City and "Consultant" as to the degree of care, time, or expense to be incurred by "Consultant" for services, proposals, agreements, reports, designs, specifications, and bid documents.

RELATIONSHIP OF PARTIES: Nothing shall be construed or interpreted as requiring "Consultant" to assume the status of owner, operator, generator, person who arranges for disposal, transporter, or storer, as those terms or any other similar terms are used in any federal, state, or local statute, regulation, ordinance, or order governing the treatment, handling, storage, or disposal of any toxic or hazardous substance or waste.

BILLING AND PAYMENT: Invoices will be submitted by "Consultant" on a monthly basis, and shall be due and payable on receipt. Interest at the rate of one and one-half percent (1.5%) per calendar month, but not exceeding the maximum rate allowable by law, shall be payable on any amounts that are due and unpaid within forty-five (45) days from the date of the City's receipt of the invoice, with payments to be applied first to accrued late payment charges and then to the principal unpaid amount.

TIME OF PERFORMANCE: "Consultant" makes no warranties regarding the time of completion of services and shall not be in default of performance under this Agreement where such performance is prevented, suspended, or delayed by any cause beyond "Consultant"'s control. Neither party will hold the other responsible for damages for delays in performance caused by Acts of God or other events beyond the control of the other party and which could not have been reasonably foreseen or prevented. Such delays will extend completion dates commensurately.

CHANGED CONDITIONS: If, during the course of the performance of services under a task release request, conditions or circumstances develop or are discovered which were not contemplated by "Consultant" and which materially affect "Consultant"'s ability to perform or which would materially decrease or increase the costs to "Consultant" of performing, then "Consultant" will notify City in writing, and "Consultant" and City shall renegotiate in good faith the terms of this Agreement or the conditions and budgets of the task release requests within thirty (30) days. Alternatively, either party shall thereupon have the right to terminate the task release request; provided, however, that upon any such termination, "Consultant" shall be compensated for services rendered to the date of termination.

RIGHT OF ENTRY: City agrees to grant or arrange for right of entry at the project site, whether or not the project site is owned by City.

REPORTING AND DISPOSAL: City shall be solely responsible for notifying all appropriate federal, state, local, or other governmental agencies of the existence of any hazardous, toxic, or dangerous materials on or in the project site or discovered during performance of this Agreement. "Consultant" may, in its sole discretion, agree to notify such agencies on behalf of City, as City's agent, as requested by City. City shall be solely responsible for arranging and paying the costs to lawfully transport, store, treat, recycle, dispose of, or otherwise handle, hazardous or toxic substances, or wastes and samples. "Consultant" may assist the City in these matters, but does not inherit any of the responsibilities associated.

ATTORNEYS' FEES AND COSTS: The prevailing party in any action to enforce or interpret provisions of this Agreement shall be entitled to recover all reasonable attorney fees and costs incurred in such action. If "Consultant" is requested to respond to any mandatory orders for the production of documents or witnesses on City's behalf regarding work performed by "Consultant", City agrees to pay all costs and expenses incurred by "Consultant" not reimbursed by others in responding to such order, including staff time at current billing rates, and reproduction expenses. However, the City reserves the right to recover these costs from "Consultant" if the City does not prevail in the litigation, and it was determined that the losses incurred by the prevailing party were as the result of work performed by "Consultant".

WAIVER: Any failure of a party to enforce any provision of this Agreement will not constitute a waiver of such provision or prejudice the right of that party to enforce such provision at any subsequent time. Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of a subsequent breach of the same provision or condition, unless the party sought to have waived has expressly so stated in writing, and is so approved in writing by the other party.

LAW TO APPLY: This Agreement shall be governed and construed in accordance with the laws of the State of Oregon, and applicable Federal laws and regulations. It is agreed by each party that any action of law, suit in equity, or judicial proceeding for the endorsement of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Jackson County, Oregon. If any portion of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the same shall not affect the legality, validity, or enforceability of the Agreement as a whole or of any portion thereof, not so adjudged. Any provisions of this Agreement held in violation of any law shall be deemed stricken and all remaining provisions will remain binding on all parties.

MISCELLANEOUS: Any notice to be given hereunder shall be in writing (including, without limitation, by facsimile transmission) and sent to the address of the other party, as set forth herein or to an address subsequently designated by the receiving party.

This Agreement, consisting of all documents attached hereto, constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes all previous agreements, discussions, representations, proposals, and correspondence between the parties. It is understood and agreed that no agreement, guarantee, warranty, or duty, expressed or implied, not expressed herein shall limit or qualify the terms of this Agreement. This Agreement may only be amended in writing, as approved and signed by both parties.

PARTIES BOUND: The parties acknowledge that they may conduct their respective business operations through entities which they directly or indirectly, through one or more intermediaries and agreements, control and therefore agree to cause such other entities to abide by the terms and conditions of this Agreement, as if they were parties hereto to the extent necessary to carry out the purposes of this Agreement. Further, the parties shall be entitled to their respective obligations hereunder to be satisfied, and to cause their respective benefits hereunder to be received, by such other entities. Subject to the foregoing, neither party shall assign this Agreement without the prior written consent of the other party.

CONFLICT IN FORMS: In the event of a conflict between the terms set forth herein and any supplemental contract documents herein contemplated, the terms set forth herein shall govern. The preprinted terms and conditions appearing on any of "Consultant"'s or City's purchase orders or other forms or documents, that conflict with the terms and conditions of this Agreement, shall be considered null and void.

IN WITNESS WHEREOF, AND BEING AN AUTHORIZED REPRESENTATIVE OF THE PARTY FOR WHICH I SIGN, I HEREBY EXECUTE THIS AGREEMENT, EFFECTIVE ON THE DATE STATED ABOVE, AND ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE AGREEMENT IN ITS ENTIRETY, INCLUDING THE DEFINITIONS, TERMS, AND CONDITIONS STATED ABOVE, AND I HAVE RECEIVED A TRUE COPY THEREOF.

City of Central Point

“Consultant”

By: _____
Authorized Signatory

By: _____
Authorized Signatory

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____